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4 ROBERT SEGURA,
5 Plaintiff,
6 v.
7 MOLLY O'NEAL,
8 Defendant.

9 Case No. 15-cv-00854-JD
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**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Re: Dkt. Nos. 3, 4

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13 Robert Segura, a civil detainee, has filed a civil rights action under 42 U.S.C. § 1983. He
14 is civilly committed pursuant to California's Sexually Violent Predators Act (SVPA). *See* Cal.
15 Welf. & Inst. Code 6600, et seq. He is committed in Coalinga which is located in the Eastern
16 District of California. The underlying commitment proceeding originated in Santa Clara County,
17 which is in this district. He has been granted leave to proceed in forma pauperis.

18 **DISCUSSION**

19 **I. STANDARD OF REVIEW**

20 Federal courts must engage in a preliminary screening of cases in which prisoners seek
21 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
22 § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims
23 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
24 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se
25 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
26 Cir. 1990).

27 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
28 claim showing that the pleader is entitled to relief." Although a complaint "does not need detailed

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to
2 relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above
4 the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
5 omitted). A complaint must proffer "enough facts to state a claim to relief that is plausible on its
6 face." *Id.* at 570. The United States Supreme Court has explained the "plausible on its face"
7 standard of *Twombly*: "While legal conclusions can provide the framework of a complaint, they
8 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
9 should assume their veracity and then determine whether they plausibly give rise to an entitlement
10 to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by
12 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was
13 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

14 II. LEGAL CLAIMS

15 Segura alleges that his civil commitment was the result of a faulty mental health
16 assessment and he seeks protection from future faulty assessments and states his appointed
17 counsel was ineffective for not adequately challenging the assessment.

18 "Federal law opens two main avenues to relief on complaints related to imprisonment: a
19 petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871,
20 Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the lawfulness of confinement or
21 to particulars affecting its duration are the province of habeas corpus.'" *Hill v. McDonough*, 547
22 U.S. 573, 579 (2006) (quoting *Muhammad v. Close*, 540 U.S. 749, 750 (2004)). "An inmate's
23 challenge to the circumstances of his confinement, however, may be brought under § 1983." *Id.*

24 Habeas is the "exclusive remedy" for the prisoner who seeks "immediate or speedier
25 release" from confinement. *Skinner v. Switzer*, 131 S. Ct. 1289, 1293 (2011) (quoting *Wilkinson*
26 v. *Dotson*, 544 U.S. 74, 82 (2005)); see *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998); *Edwards*
27 v. *Balisok*, 520 U.S. 641, 648 (1997); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). "Where the
28 prisoner's claim would not 'necessarily spell speedier release,' however, suit may be brought

1 under § 1983.”” *Skinner*, 131 S. Ct. at 1293 (quoting *Wilkinson*, 544 U.S. at 82). As a
2 consequence, challenges to prison conditions traditionally have been cognizable only via § 1983,
3 while challenges implicating the fact or duration of confinement must be brought through a habeas
4 petition. *Docken v. Chase*, 393 F.3d 1024, 1026 (9th Cir. 2004).

5 Although plaintiff is a civilly committed patient, rather than a criminally convicted
6 prisoner, the habeas versus § 1983 proper remedy distinction applies. Cf. *Hubbart v. Knapp*, 379
7 F.3d 773, 779-81 (9th Cir. 2004) (upholding constitutionality of SVPA against habeas challenge
8 under 28 U.S.C. § 2254) with *Hydrick v. Hunter*, 669 F.3d 937, 941-42 (9th Cir. 2012) (accepting
9 defendants’ qualified immunity defense to civil committees’ § 1983 challenge to their conditions
10 of confinement).

11 Segura states that he was subject to a faulty mental health assessment that was used as
12 evidence to determine that he should be subject to civil commitment. He alleges that the
13 California Department of State Hospitals conducted the assessment. The sole defendant in this
14 case is the supervising deputy of the Santa Clara County Public Defender’s Office, who Segura
15 alleges supervised the assigned deputy public defender. He states that defendant should have been
16 aware that the assigned public defender was providing ineffective assistance of counsel which
17 resulted in Segura receiving the faulty mental health assessment. He alleges that the faulty health
18 assessments prevent outpatient treatment in violation of his Constitutional rights. For relief, he
19 seeks protection from future faulty mental health assessments.

20 To the extent that Segura seeks to challenge his underlying commitment or seek relief that
21 would entitle him to immediate or earlier release from his civil commitment, he must file a
22 petition for a writ of habeas corpus under 28 U.S.C. § 2254 after exhausting state judicial
23 remedies. See *Skinner*, 131 S. Ct. at 1293; see also *Nelson v. Sandritter*, 351 F.2d 284, 285 (9th
24 Cir. 1965) (constitutionality of state civil commitment proceedings may be challenged in federal
25 habeas corpus after state judicial remedies have been exhausted).

26 To the extent that Segura seeks relief regarding his treatment, his § 1983 action must be
27 brought in the Eastern District of California, where plaintiff is civilly committed at Coalinga State
28 Hospital. See 28 U.S.C. §§ 84(b), 1391(b). The Court notes that Segura filed a previous case,

1 *Segura v. Allenby*, No C-14-5216 DMR (PR), that also challenged the validity of the health
2 assessments and named as defendants officials at the California Department of State Hospitals and
3 Coalinga State Hospital. That case was transferred to the Eastern District of California. To the
4 extent Segura seeks to again challenge the health assessments, this case is dismissed as
5 duplicative.

To the extent Segura seeks injunctive relief against Defendant Molly O’Neal due to the actions of a subordinate, his complaint is dismissed with leave to amend. Segura presents general allegations that defendant should have known that the health assessments were faulty and irrational, but provides no specific details of the actions of defendant. Segura should also clarify the relief that he seeks. He seeks relief from future assessments but does not discuss the circumstances that would lead to another assessment. It is not clear if he has already been committed, is still awaiting the final commitment hearing, or if he has been committed indefinitely. He must also address why the relief he seeks is not more properly brought in a habeas action if it concerns ineffective assistance of counsel.

CONCLUSION

1. The motions for leave to proceed in forma pauperis (Docket Nos. 3, 4) are

17 | GRANTED.

- 18 2. The complaint is **DISMISSED** with leave to amend. The amended complaint must
19 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption
20 and civil case number used in this order and the words AMENDED COMPLAINT on the first
21 page. Because an amended complaint completely replaces the original complaint, plaintiff must
22 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
23 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to
24 amend within the designated time will result in the dismissal of all defendants except Cavagnolo
25 and this case will only proceed against him.

- 26 3. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
27 Court informed of any change of address by filing a separate paper with the clerk headed "Notice
28 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to

1 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
2 Civil Procedure 41(b).

3 **IT IS SO ORDERED.**

4 Dated: July 29, 2015

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JAMES DONATO
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT SEGURA,
Plaintiff,
v.
MOLLY O'NEAL,
Defendant

Case No. 15-cv-00854-JD

CERTIFICATE OF SERVICE

MOLLY O'NEAL,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 29, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert Segura ID: Patient No. 365-7
P.O. Box 5003
Coalinga, CA 93210-5003

Dated: July 29, 2015

Richard W. Wieking
Clerk, United States District Court

By: Lisa R. Clark
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO